



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF F-O-O-

DATE: AUG. 3, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a medical technologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

- (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
- (B) Waiver of job offer –
 - (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether,

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a clinical laboratory scientist in the Department of Pathology at [REDACTED] in [REDACTED] Maryland. For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

With respect to the first prong under the *Dhanasar* framework, the Petitioner asserts that her work in performing laboratory analysis of highly contagious and dangerous diseases satisfies both the substantial merit and national importance requirements. [REDACTED] of [REDACTED]

[REDACTED] states in her letter that as a medical technologist, the Petitioner provides "the highest quality test results." [REDACTED] also notes that in addition to her regular duties, the Petitioner voluntarily completed additional training and qualified to perform tests as part of [REDACTED] which was recently completed to treat patients with emerging infectious and other diseases such as Ebola and avian flu. The director of the [REDACTED]

[REDACTED] states in his letter that the Petitioner is one of five fully trained clinical laboratory scientists who have been working in the [REDACTED] lab for three years, and that in some instances when the [REDACTED] has been activated, the Petitioner "was the only qualified laboratory staff member available to prepare the [REDACTED] lab for patient testing."

Both [REDACTED] and [REDACTED] state that it has been reported that "70% of clinical decision making by physicians is based on laboratory test results." In addition, [REDACTED] notes that the [REDACTED] at [REDACTED] was recently designated "as part of a federal plan to improve national preparedness for highly infectious diseases." We find that the Petitioner's proposed work as a medical technologist has substantial merit.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner submitted a copy of her degree and transcripts from [REDACTED] which establish that she holds Bachelor of Science degree in Medical Technology. She also submitted a letter from [REDACTED] which verifies that she has held the position of Clinical Laboratory Scientist since December 2009. See 8 C.F.R. § 204.5(k)(3)(i)(A).

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of her work. The record includes a page from the [REDACTED] website which describes the [REDACTED] as “one of ten national centers with the capacity to handle high consequence pathogens in a safe and controlled environment.” The Petitioner also submitted a section from the U.S. Bureau of Labor Statistics’ *Occupational Outlook Handbook* which describes the work done by medical laboratory technologists and technicians, and indicates that due to the aging population, job growth is expected to grow much faster in these positions when compared to the average of all occupations. While this evidence discusses the importance of biocontainment centers in treating patients with Ebola and other highly infectious diseases, and the importance of the role played by medical technologists, it is not sufficient to demonstrate that the Petitioner’s proposed work as a medical technologist has broader implications for the field of medicine or for healthcare in the United States. In determining national importance, the relevant question is not the importance of the field or industry in which the individual will work, but “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889.

The letters from [REDACTED] and [REDACTED] provide sufficient details of the Petitioner’s duties apart from her work in the [REDACTED] which includes monitoring quality control results, troubleshooting instrument and assay problems, and training new employees and students. However, the Petitioner has not demonstrated that the benefits of this proposed work will extend beyond [REDACTED] or any other employer in the healthcare industry, at a level sufficient to establish the national importance of her proposed endeavor.⁴ In addition, while the [REDACTED] at [REDACTED] serves a larger regional area, the Petitioner has not established that her work within the [REDACTED] as a medical technologist stands to impact the field of healthcare more broadly. Accordingly, the Petitioner has not established that her proposed endeavor has national importance.

As the documentation in the record does not establish the national importance of her proposed endeavor(s) as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of F-O-O-*, ID# 1441994 (AAO Aug. 3, 2018)

⁴ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* At 893.